

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 JOSHUA LEE REDDING,

9 Plaintiff,

10 v.

11 CORRECTIONS DEPUTY SCOTT  
12 GRIFFITH,

Defendant.

CASE NO. 2:18-cv-01536-BAT

**ORDER REGARDING WAIVER OF  
JURY TRIAL AND LETTERS TO  
COURT**

13 The sole allegation remaining in this case is whether Defendant Griffith used excessive  
14 force against Plaintiff Joshua Lee Redding. Pursuant to their Reports of Trial Readiness, the  
15 parties consented to trial by a Magistrate Judge. Dkts. 57 and 58. Based on that consent, this case  
16 has been assigned to the undersigned Magistrate Judge for all further proceedings. Dkt. 59.

17 In his Report of Trial Readiness, Plaintiff stated that he “will be requesting a trial by  
18 jury.” Dkt. 58. Defendant argues that Plaintiff has waived his right to a jury as he failed to file a  
19 demand for jury trial in a timely matter. Dkt. 57. The Court requested additional briefing on this  
20 issue prior to setting this case for trial and setting pretrial deadlines. Dkt. 61. That briefing is now  
21 before the Court and for the reasons set forth below, the Court finds that Plaintiff has waived his  
22 right to a trial by jury. The Court also addresses various letters sent by Plaintiff to the Court  
23 Clerk and Plaintiff’s failure to comply with the Prisoner E-filing Initiative.

1 DISCUSSION

2 A. Right to Jury Trial

3 When Plaintiff filed his Complaint on October 22, 2018, the complaint contained no  
4 reference to a jury trial and there was no specific jury demand. Dkt. 4. Defendant Scott Griffith  
5 filed his Answer on March 25, 2019 and has not requested a jury trial. Dkt. 15. Plaintiff first  
6 requested a jury trial on December 2, 2019, a year after the filing of his complaint and after all of  
7 his claims, except the claim against Defendant Griffith, were dismissed.

8 Federal Rule of Civil Procedure 38(b) requires a party wishing to assert the right of trial  
9 by jury to “demand a jury trial by . . . (1) serving the other parties with a written demand – which  
10 may be included in a pleading – no later than 14 days after the last pleading directed to the issue  
11 is served; and (2) filing the demand in accordance with Rule 5(d).” Because no jury demand was  
12 contained in his Complaint, Plaintiff’s jury demand was due by April 8, 2019, fourteen days after  
13 Defendants’ Answer, the “last pleading directed to the issue” was served.

14 To date, Plaintiff has not filed a demand for a jury trial or a formal motion for a jury trial.  
15 In his most recent filing, Plaintiff merely states, “As far as Jury Trial Demand. I didn’t know I  
16 had to file a Demand for trial before we’re ready. That’s why I requested court appointed  
17 counsel. I know nothing about how this process works and will need an attorney before I go any  
18 further with this.” Dkt. 62 at 3. As discussed below, Plaintiff’s request for the appointment of  
19 counsel was previously denied.

20 A party’s failure to serve and file the demand in the manner specified in Rule 38(b)  
21 constitutes a waiver of the right to a trial by jury. Fed. R. Civ. P. 38(d). While the district court  
22 may, in its discretion, order a jury trial on a motion by a party who has not filed a timely demand  
23 for one, that discretion is narrow. *See* Fed. R. Civ. P. 39(b); *Pacific Fisheries Corp. v. HIH Cas.*

1 & *General Ins., Ltd.*, 239 F.3d 1000, 1002 (9th Cir. 2001) (citing *Lewis v. Time Inc.*, 710 F.2d  
2 549, 556–57 (9th Cir.1983)). A court is not permitted to grant relief when the failure to make a  
3 timely demand results from an oversight or inadvertence. *Pacific Fisheries Corp.*, 239 F.3d at  
4 1002. An untimely request for a jury trial must be denied unless some cause beyond mere  
5 inadvertence is shown. *Id.* A good faith mistake of law is no different than inadvertence or  
6 oversight. *Id.* P

7 Plaintiff states that his failure to demand a jury trial is because he filed his complaint pro  
8 se and was unaware of the requirements of Rule 38(b). However, this good faith mistake as to  
9 the deadline for demanding a jury trial establishes no more than inadvertence, which is not a  
10 sufficient basis to grant relief from an untimely jury demand. *See id.*; *see also Kulas v. Flores*,  
11 355 F.3d 780, 784 (9<sup>th</sup> Cir. 2001) (holding that pro se plaintiff waived any right to a jury trial by  
12 failing to file a timely demand as required by Fed. R.Civ.P. 38(b)); *see also Zivkovic v. Southern*  
13 *California Edison Co.*, 302 F.3d 1080 (9<sup>th</sup> Cir. 2002) (same).

14 Accordingly, the Court finds Plaintiff waived any right to a jury trial by failing to file a  
15 timely demand as required by Fed.R.Civ.P. 38(b).

16 B. Spoliation

17 The Court previously ruled on Plaintiff's motions seeking relief for the alleged spoliation  
18 by Defendant and/or Defendant's counsel of a jail video tape. See Dkts. 39 and 51. Specifically,  
19 the Court examined the record and found there was no spoliation. Defendant's counsel submitted  
20 a declaration establishing no video tape of the alleged incident exists because jail security tapes  
21 are preserved for only 60 days after which the tapes are routinely overwritten and erased. Dkts.  
22 29, 30, and 31. The Court further noted that by the time most of Plaintiff's claims in this case  
23 were dismissed and service on Defendant Griffith was ordered, the jail security tape was already

1 over written and erased. Dkt. 39. Additionally, at no time did Plaintiff request the video during  
2 discovery. Dkt. 29 at 4. The Court thus concluded that it would be inappropriate under these  
3 circumstances to sanction defendant or defense counsel. Dkt. 39.

4 In his most recent filing, Plaintiff indicates he “just received Notice from Public  
5 Disclosure Unit regarding the video tape of this incident, as well as some other documents I have  
6 request. Well there [sic] saying the video is ready and that I can receive it now.” Dkt. 62 at 2.  
7 According to Defendant this does not accurately summarize the communications Plaintiff  
8 received from the Public Disclosure Unit. While Plaintiff did submit a public records request  
9 seeking copies of any video regarding the incident, included in that request was a request for a  
10 copy of the incident report written by Deputy Griffith. Dkt. 65, Declaration of Jessica Payne at ¶  
11 3. Because Plaintiff requested copies of the incident report, the Public Disclosure Unit notified  
12 him that responsive records were available. *Id.*, Payne Decl. at ¶4. But the Public Disclosure Unit  
13 was unable to locate any video responsive to Plaintiff’s request, as the video had been  
14 automatically overridden by the Jail’s security video software prior to the Public Disclosure  
15 Unit’s receipt of Mr. Redding’s request. *Id.* Thus, there is no evidence that the Public Disclosure  
16 Unit affirmatively notified Mr. Redding of the existence of a video.

17 Plaintiff has already moved for sanctions against Defendant and Defendant’s counsel for  
18 the alleged spoliation of the video (Dkt. 37), and the Court has twice denied his motions. Dkts.  
19 39 and 51. As previously stated by this Court, there is no evidence Defendant Griffith took any  
20 action regarding the video, intentionally destroyed the video, or even had the authority to order  
21 the video’s destruction. Defense counsel was not involved in the case until after the video was  
22 erased and thus had no role in the loss of the video.

1 Because Plaintiff has offered no additional evidence to support the renewal of this  
2 motion, the Court again denies the motion. Future motions similarly lacking evidence will be  
3 given no consideration.

4 C. Request for Counsel

5 This is Plaintiff's second request for court-appointed counsel. See Dkt. 33. The Court has  
6 already denied Plaintiff's request. Dkt. 35. Plaintiff does not articulate any exceptional  
7 circumstances which would warrant reconsideration of that ruling. Therefore, this second motion  
8 is also denied.

9 D. Letters to Clerk and Failure to Comply with E-Filing Initiative

10 Plaintiff continues to mail "letters" to the Court Clerk. In his latest letter, Plaintiff seeks  
11 all "documents, statements, affidavits, depositions, medical evidence, etc." Dkt. 63. This is not  
12 the appropriate way to obtain relief from the Court. First, discovery requests should be directed  
13 to the Defendants and not to the Court. Second, if Plaintiff seeks relief from the Court, he must  
14 set forth his grounds for such relief in a motion that is correctly noted for consideration on the  
15 Court's docket.

16 In addition, Plaintiff persists in ignoring the requirement that he comply with the Prisoner  
17 E-Filing Initiative, which is mandatory for all prisoner litigants incarcerated at the Stafford Creek  
18 Corrections Center. If Plaintiff continues to file letters instead of motions and continues to fail to  
19 comply with the E-Filing Initiative, the Court will give no further consideration to the filings.

20 Accordingly, it is **ORDERED**:

21 1) This case shall be tried without a jury before the Court; an order setting the trial  
22 date and pretrial deadlines shall issue separately.

1           2)     Plaintiff's letters requesting sanctions for spoliation, the appointment of counsel,  
2 and for discovery (Dkts. 62 and 63) are **DENIED**.

3           3)     Plaintiff is cautioned that his future filings with this Court shall be in the form of  
4 motions properly noted for consideration, and that the filings shall be submitted through the  
5 Prisoner E-Filing available to him at Stafford Creek Corrections Center.

6           DATED this 31st day of January, 2020.

7  
8 

9           \_\_\_\_\_  
BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge